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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,446	04/20/2004	Kazumi Minoguchi	0051-0226PUS1	2718

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BIRCH STEWART KOLASCH & BIRCH  
PO BOX 747  
FALLS CHURCH, VA 22040-0747

EXAMINER
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SEVERSON, RYAN J

ART UNIT	PAPER NUMBER
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3731

NOTIFICATION DATE	DELIVERY MODE
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06/24/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/827,446	<b>Applicant(s)</b> MINOGUCHI ET AL.	
	<b>Examiner</b> Ryan J. Severson	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 and 11-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-10 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/26/2008</u>  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 27 March 2009 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 6, 10 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakata et al. (Des. 368,965) in view of Sasaki (JP 06-339514).**

4. Nakata et al. disclose the apparatus substantially as claimed, including first and second tooth-hardening members each having projections and a gripping opening. However, Nakata et al. do not disclose the first and second tooth-hardening members have different hardnesses.

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5. Attention is drawn to Sasaki, who teaches the center portion of a child's toy be hard resin and the outer members be soft (see the abstract and constitution sections of the abstract translation) to allow the device to be used as a tooth hardener for infants. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the toy of Nakata et al. of hard material at its center (the first surface of the first tooth-hardening member) and softer at the projections (the second tooth-hardening member) to allow the toy to be used as a tooth hardening device.

6. **Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakata et al. (Des. 368,965) in view of Sasaki (JP 06-339514) as applied to claim 6 above, and further in view of Monaco (2,532,116).** The combination of Nakata et al. and Sasaki does not specifically disclose colored balls inside an opening with a transparent cover. Attention is drawn to Monaco, who teaches the use of colored balls (18) inside an opening with a transparent cover on a teething device to enhance the entertainment value of the device to the child. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include an opening with colored balls in the device of the combination of Nakata et al. and Sasaki, as taught by Monaco, to enhance the entertainment value of the device to the child.

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7. **Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakata et al. (Des. 368,965) in view of Sasaki (JP 06-339514) and Monaco (2,532,116) as applied to claim 7 above, and further in view of Ripley (1,117,093).**

The combination of Nakata et al., Sasaki, and Monaco does not disclose holes in the transparent cover. Attention is drawn to Ripley, who teaches holes or openings can be formed in a member that contains balls to increase the noise created by the balls tumbling in the open space to enhance the entertainment value of the device to the child. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the openings of Ripley with the cover of the combination of Nakata et al., Sasaki, and Monaco to enhance the entertainment value of the device to the child by creating more noise.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 6-10 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan J. Severson whose telephone number is (571) 272-3142. The examiner can normally be reached on Monday - Friday 8:30-5:00.

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10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. J. S./  
Examiner, Art Unit 3731  
6/18/09

/Anhtuan T. Nguyen/  
Supervisory Patent Examiner, Art Unit 3731  
6/19/09